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In the Supreme Court of the United States

OCTOBER TERM, 1980

RICHARD S. SCHWEIKER, SECRETARY OF HEALTH AND HUMAN SERVICES, AND ADMINISTRATOR, HEALTH CARE FINANCING ADMINISTRATION, PETITIONERS

v.

GRAY PANTHERS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONERS

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QUESTION PRESENTED

Whether regulations of the Secretary of Health and Human Services governing the extent to which certain states that participate in the Medicaid program may consider the income of an applicant's spouse in determining eligibility for and the amount of Medicaid assistance are arbitrary, capricious, or otherwise unlawful.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 629 F.2d 180. The opinion of the district court (Pet. App. 23a-30a) is reported at 461 F. Supp. 319.

JURISDICTION

The judgment of the court of appeals (Pet. App. 21a-22a) was entered on July 29, 1980. On October 20, 1980, the Chief Justice extended the time in which to petition for a writ of certiorari to and including

November 10, 1980. The petition was filed on that date and was granted on January 26, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE AND REGULATIONS INVOLVED

Section 1902(a)(17) and (f) of the Medicaid Act, 42 U.S.C. 1396a(a)(17) and (f), the regulations invalidated by the court of appeals (42 C.F.R. 435.734, 436.602, 436.711, and 436.821), and 42 C.F.R. 435.723 are reprinted, in pertinent part, at Pet. App. 35a-38a.

STATEMENT

1. The Medicaid program was established in Title XIX of the Social Security Act, 42 U.S.C. 1396 *et seq.*, "for the purpose of providing federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." *Harris* v. *McRae*, No. 79-1268 (June 30, 1980), slip op. 1-2. As adopted in 1965, Title XIX required participating states to provide medical assistance to individuals who received cash assistance under any of the four "categorically needy" assistance programs established in the Social Security Act.[1] Under Section 1902(a)(17) of the Act, 42 U.S.C. 1396a(a)(17), each participat-

[1] Old Age Assistance (OAA), Title I, 42 U.S.C. (1970 ed.) 301 *et seq.*; Aid to Families with Dependent Children (AFDC), Title IV, 42 U.S.C. (1970 ed.) 601 *et seq.*; Aid to the Blind (AB), Title X, 42 U.S.C. (1970 ed.) 1201 *et seq.*; Aid to the Permanently and Totally Disabled (APTD), Title XIV, 42 U.S.C. (1970 ed.) 1351 *et seq.* Participating states could also offer medical assistance to the "medically needy"—*i.e.*, certain individuals whose income was greater than permissible under the categorical assistance plans but inadequate to pay medical expenses. Congress, however, thought it appro-

ing state was required to adopt "reasonable standards * * * for determining eligibility for and the extent of medical assistance," and to take into account "only such income and resources as are * * * available to the applicant or recipient." Furthermore, in response to practices that had been adopted by states administering medical assistance plans established under the predecessor Kerr-Mills program, Congress required states that participated in the Medicaid program to refrain from taking into account "the financial responsibility of any individual for any applicant or recipient of assistance * * * *unless such applicant or recipient is such individual's spouse*" or minor, blind, or disabled child. 42 U.S.C. 1396a(a)(17)(D) (emphasis added).

With the approval of the Secretary of Health, Education, and Welfare (now Health and Human Services), some participating states took the position that it was reasonable to expect an applicant's spouse to help pay the cost of the applicant's medical expenses and, therefore, adopted rules that took into account the income of the spouse in determining Medicaid eligibility and the amount of assistance. These states calculated an amount considered necessary to pay the basic living expenses of the applicant's spouse and "deemed" any income of the spouse in excess of that amount as "available" to the applicant. Consistent with Congress' expressed intent that the medical expenses of the "most needy" be met first under the Medicaid program,[2] the amount considered necessary to pay the

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priate that the medical expenses of the "most needy" be met before extending benefits to the less needy. See, *e.g.*, S. Rep. No. 404, 89th Cong., 1st Sess. 77 (1965).

[2] See, *e.g.*, S. Rep. No. 404, *supra*, at 77, 78-79; H.R. Rep. No. 213, 89th Cong., 1st Sess. 66, 68 (1965).

basic living expenses of the applicant's spouse was generally set near subsistence level (Pet. App. 5a).

In 1972, Congress replaced three of the four categorical assistance programs with a new federal program, Supplemental Security Income for the Aged, Blind, and Disabled (SSI), Title XVI, 42 U.S.C. 1381 *et seq.*[3] From the beginning of the Medicaid program in 1965, participating states were required to provide medical assistance to those individuals receiving benefits under one of the cash assistance programs. Adoption of the SSI program was not intended to affect this traditional linkage. But under the SSI program, the states would no longer control the standards of need for the aged, blind, and disabled. The group of individuals who would be eligible for SSI assistance and, therefore, eligible for Medicaid assistance was in some states significantly larger than the group that was eligible under the prior assistance programs for the aged, blind, and disabled. To avoid forcing states that participated in the Medicaid program to (1) expand their Medicaid assistance obligations involuntarily, (2) withdraw from the Medicaid program, or (3) reduce the level of benefits provided under the Medicaid program, Congress offered the states what has come to be called the "209(b) option," 42 U.S.C. 1396a(f).[4] Each state was given the option

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[3] As its name indicates, the SSI program replaced the categorical assistance plans for the aged, blind, and disabled. The provisions of the old categorical assistance programs remain effective in Puerto Rico, Guam, and the Virgin Islands. See Pub. L. No. 92-603, Title III, Sections 303(a) and (b), 86 Stat. 1484.

[4] The provision was enacted as Section 209(b) of the Social Security Amendments of 1972, Pub. L. No. 92-603, 86 Stat. 1381.

of providing medical assistance to all recipients of cash assistance under the SSI program or to the more limited group of individuals who were eligible for SSI benefits and who also would have been eligible for assistance under the state Medicaid plan in effect on January 1, 1972 (*ibid.*; Pet. App. 4a-5a).

Under the SSI statute, the income of an applicant's spouse is attributed to the applicant for the purpose of determining eligibility and the amount of assistance.[5] Any state that participates in the Medicaid program but fails to exercise the 209(b) option (an "SSI state") is required to provide medical assistance to all SSI benefit recipients. Because of the relationship between the Medicaid and SSI statutes, and to avoid the unfairness and administrative difficulties involved in permitting SSI states to determine Medicaid eligibility by reference to rules different from those applied in determining SSI eligibility, the Secretary issued regulations requiring SSI states to consider the income of an applicant's spouse in making Medicaid determinations only to the extent required by the SSI statute. 42 C.F.R. 435.700, 435.723.

In addition, the Secretary required 209(b) states to consider the income of an applicant's spouse in determining Medicaid eligibility and the level of bene-

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[5] When the applicant and his spouse live in the same household, the income of both is considered in determining the eligibility of either for SSI benefits. 42 U.S.C. 1382(a)(1), (2), 1382c(b), 1382c(f)(1). When the applicant and his spouse cease to share the same household, the income of the applicant's spouse is no longer considered in determining the applicant's eligibility for SSI benefits, unless the applicant's spouse is an "eligible spouse," as defined in 42 U.S.C. 1382c(b). By definition, no one can remain an "eligible spouse" for more than six months after separation from his spouse. 42 U.S.C. 1382c(b).

fits at least to the extent that it would be considered in an SSI state. 42 C.F.R. 435.734. Section 209(b) of the 1972 amendments, 42 U.S.C. 1396a(f), however, authorizes a state that exercises the 209(b) option to deny Medicaid benefits to any individual who (although eligible for SSI benefits) would not have been eligible for medical assistance under the more restrictive eligibility standards of the state's Medicaid program in effect in January 1972. Therefore, the Secretary's regulations allow Section 209(b) states to consider the income of an applicant's spouse to the extent that they would have done so under their 1972 Medicaid plans. 42 C.F.R. 435.734.

2. Respondent filed suit in the United States District Court for the District of Columbia, challenging the Secretary's regulations governing the extent to which the income of an applicant's spouse could be considered in making Medicaid determinations in 209(b) states, Puerto Rico, Guam, and the Virgin Islands.[6] Respondent argued that these regulations were inconsistent with Section 1902(a)(17) of the Social Security Act, 42 U.S.C. 1396a(a)(17), and the Due Process Clause of the Fifth Amendment (Pet. App. 26a-27a). Finding the statutory contention dispositive, the district court did not reach respondent's constitutional claims (*id.* at 27a n.3). In the district court's view (*id.* at 28a & n.5), Section 1902(a)(17)(D) of the Act, 42 U.S.C. 1396a(a)(17)(D), "may

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[6] 42 C.F.R. 435.734, 436.602, 436.711, 436.821 (Pet. App. 36a-38a); see *id.* at 23a n.2, 33a. Respondent is "a voluntary organization dedicated to improving the treatment accorded our nation's elderly" (*id.* at 2a). The district court found that respondent had standing to challenge the regulations because some of its members would have had standing (*id.* at 27a n.4).

allow a state to enforce its financial responsibility laws against a spouse or parent," but a participating state may not consider any portion of the income of an applicant's spouse to be "available" to an applicant without making an individual determination of the living expenses of the spouse. The court held that the challenged regulations accordingly were invalid and ordered the Secretary to adopt new regulations "requir[ing] all [209(b) jurisdictions, Puerto Rico, Guam, and the Virgin Islands] to cease the deeming of income for any length of time between institutionalized Medicaid recipients or applicants and their noninstitutionalized spouses * * *" (Pet. App. 31a-32a; *id.* at 33a-34a).[7]

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[7] Given its interpretation of Section 1902(a)(17) of the Act, the district court's invalidation of 42 C.F.R. 435.734 is understandable. The basis for the court's invalidation of the regulations applicable in Puerto Rico, Guam, and the Virgin Islands is more difficult to discern. First, 42 C.F.R. 436.602, which is essentially a restatement of Section 1902(a)(17)(D), simply prohibits the consideration of the income of any of the applicant's relatives, except his spouse or (in some circumstances) his parent. Second, 42 C.F.R. 436.711 and 436.821 simply require the relevant Medicaid agencies to apply the financial eligibility requirements that would be applied in determining eligibility under the old categorical assistance plans (see note 1, *supra*), including the extent to which the income of a spouse should be considered. Since Puerto Rico, Guam, and the Virgin Islands are required to provide medical assistance to all categorical assistance recipients (see 42 U.S.C. 1396a(a)(10)(A)) and (except with respect to the "medically needy" and AFDC beneficiaries) are not entitled to federal assistance for providing medical assistance to individuals who are ineligible to receive benefits under the categorical assistance programs, it is difficult to understand how any other rules could be applied. The court of appeals also

A divided panel of the court of appeals affirmed, but on grounds other than those relied on by the district court. The court of appeals rejected (Pet. App. 8a) the Secretary's analysis of the pertinent statutory provisions, asserting that "there is no required federal statutory 'deeming' in the 209(b) jurisdictions which are the subject of this case." The court of appeals acknowledged (*id.* at 9a) that the "legislative history of the Medicaid statute explicitly addresses the question of when 'deeming' is proper" and "establishes a broad principle * * * that 'deeming' is appropriate between spouses * * *," but it found (*id.* at 10a) that the legislative history of the statute also "recognizes exceptions to the general rule, requiring individualized factual determinations of availability to be made." Citing this Court's decision in *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U.S. 402 (1971), the court of appeals held the regulations invalid because the Secretary, in authorizing deeming in 209(b) states, failed to consider all of the factors and policy concerns the court thought "relevant" (Pet. App. 7a)—including the difference between spouses living together and those separated by virtue of institutionalization. It therefore remanded the case to the district court (*id.* at 13a) "with direction to remand it to the Secretary for promulgation without delay of new regulations consistent with the Medicaid statute as interpreted in this opinion."

Judge MacKinnon concurred in part and dissented in part (Pet. App. 13a-17a). Judge MacKinnon agreed that the Medicaid Act permits participating states to attribute the income of one spouse to the other. In his view, however, "there is nothing to sug-

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failed to distinguish between the regulations applicable in 209(b) jurisdictions and those applicable in Puerto Rico, Guam, and the Virgin Islands.

gest that the Secretary's action in promulgating the regulations allowing the use of 'deeming' in 209(b) States is arbitrary or capricious, [which is] the limit of our scope of review * * *" (*id.* at 17a, 20a).[8]

SUMMARY OF ARGUMENT

The regulations invalidated by the court of appeals were adopted pursuant to the Secretary's express statutory authority to prescribe standards for determining what income is "available" to a Medicaid applicant within the meaning of Section 1902(a)(17)(B) of the Social Security Act, 42 U.S.C. 1396a(a)(17)(B). Since those regulations are fully consistent with the Medicaid Act and cannot reasonably be characterized as arbitrary, capricious, or otherwise unlawful, they are binding on the courts. *Batterton* v. *Francis*, 432 U.S. 416, 425-426 (1977). The court of appeals erred in substituting its judgment for that of the Secretary as to the meaning of the statutory term and the factors relevant to its interpretation.

A. As used in Section 1902(a)(17)(B) of the Act, the term "available" income includes any income that is received by the applicant or by those individuals whom Congress has determined the states may properly expect to help pay the costs of the applicant's medical care. See 42 U.S.C. 1396a(a)(17)(B), (D). Section 1902(a)(17)(D) prohibits participat-

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[8] Pursuant to the district court's order on remand (J.A. 33a), the Secretary published new regulations allowing 209(b) jurisdictions to consider the income of an institutionalized Medicaid applicant's spouse if the income would be considered in determining SSI eligibility. 45 Fed. Reg. 82254 (1980). But 209(b) states may also ignore the income of an institutionalized applicant's spouse even though it would be considered in determining SSI eligibility. *Ibid.*

ing states from considering the income of any of the applicant's relatives as "available" to the applicant, *except that of his spouse* (or, in some circumstances, his parent). 42 U.S.C. 1396a(a)(17)(D). Subject to the Secretary's authority to define what income is "available" for purposes of determining Medicaid eligibility, therefore, participating states may consider the income of an applicant's spouse as "available" to the applicant.

Participating states may take the income of an applicant's spouse into account whether or not they share a common household. The duty of support arises from the marital relationship, not the spouses' particular living arrangements. Section 1902(a)(17)(D) draws no distinction between institutionalized and non-institutionalized spouses, nor is there any suggestion in the voluminous legislative history that Congress intended an exception to "the seemingly unequivocal expectation that spouses should support each other" (Pet. App. 10a) in cases where the spouses are not living together.

The Medicaid program was not intended as an insurance scheme. Rather, it was designed to allow participating states to provide medical assistance for certain categories of individuals who are least able to afford the costs of medical care or private health insurance. Hence, it was not unreasonable for Congress to determine that eligibility for and the extent of Medicaid benefits should depend, in part, on the financial status of the applicant's spouse, nor was it arbitrary or capricious for the Secretary to promulgate regulations implementing that determination.

B. The Secretary's regulations defining the permissible maximum and minimum extent of "deeming" between spouses in 209(b) jurisdictions are based on

a careful analysis of the interlocking provisions of the Medicaid Act and the statute enacting the Supplemental Security Income for the Aged, Blind, and Disabled (SSI) program. Under Section 1902(a)(10)(A) of the Social Security Act, all states that participate in the Medicaid program must provide medical assistance to the recipients of cash benefits under the SSI program. 42 U.S.C. 1396a(a)(10)(A). Section 209(b) of the Social Security Amendments of 1972, however, gives participating states the option of denying Medicaid benefits to any SSI recipient who would not have been eligible for assistance under his state's 1972 Medicaid plan. Participating states that exercise the 209(b) option are therefore partially exempt from the requirements of 42 U.S.C. 1396a(a)(10)(A). All of the other requirements of the Medicaid statute are generally applicable notwithstanding a state's decision to exercise the 209(b) option.

The Secretary acted reasonably in requiring 209(b) states to follow SSI deeming rules in determining Medicaid eligibility and the amount of assistance. If, in SSI states, the term "available" income, as used in 42 U.S.C. 1396a(a)(17)(B), includes the income of an applicant's spouse to the extent required by the SSI statute, then logically the term should be given the same interpretation in 209(b) states. Moreover, unless 209(b) states are required to consider the income of an applicant's spouse at least to the extent that it would be considered in an SSI state or under the SSI statute, the congressional intent underlying the 209(b) option would be wholly frustrated. The 209(b) option was intended solely to permit participating states to *exclude* from coverage individuals who would be eligible under the SSI criteria, and therefore eligible for Medicaid coverage (see 42

U.S.C. 1396a(a)(10)(A)), but who would not have been eligible under the more restrictive standards of their state's 1972 Medicaid plan. Thus, the purpose of the 209(b) option was to avoid imposing expanded Medicaid obligations on participating states as a result of the more liberal SSI eligibility requirements. The option was not intended to permit 209(b) states to receive federal aid for providing medical assistance to individuals who would not be eligible even under the more liberal SSI criteria.

With limited exceptions, participating states may not provide medical assistance under the Medicaid program to individuals who are ineligible for assistance under the SSI program. For example, under Section 1902(a)(10)(C), participating states may provide medical assistance to certain categories of individuals whose income, "as determined in accordance with standards prescribed by the Secretary" (42 U.S.C. 1396a(a)(10)(C)), is greater than permissible under the SSI program but who have incurred medical expenses that eliminate most of that excess income. The state is only entitled to federal aid for providing medical assistance to these individuals if their family income (less any incurred medical expenses, 42 U.S.C. 1396b(f)(2)), "determined, in accordance with standards prescribed by the Secretary" (42 U.S.C. 1396b(f)(1)(B)(i)), is not greater than 133⅓% of the amount payable to a family of the same size under the state's AFDC program.

In all participating states, therefore, the Secretary's responsibility for administering the Medicaid statute requires that he be able to determine whether any of the non-SSI recipients for whom the state provides medical assistance are nevertheless eligible for SSI benefits. Without redetermining the Medicaid

eligibility of every non-SSI recipient covered under every state plan, it is impossible to make this determination. Thus, unless all participating states are required to consider the income of a Medicaid applicant's spouse at least to the extent that the income would be considered in determining SSI eligibility, the Secretary cannot carry out his responsibility under the statute. In those states that participate in the Medicaid program but do not exercise the 209 (b) option, all SSI benefit recipients must be provided with medical assistance. It follows, then, that (1) all participating states must be required to consider the income of an applicant's spouse to the extent that it would be considered in determining SSI eligibility and (2) states that fail to exercise the 209(b) option may not consider the income of an applicant's spouse if it would not be considered in determining SSI eligibility. The Secretary's regulations, 42 C.F.R. 435.723 and 435.734 (Pet. App. 36a-37a), accomplish this result.

In addition, the Secretary's regulations permitting 209(b) states to take the income of an applicant's spouse into account to the extent that they would have done so under their 1972 Medicaid plans are also consistent with the statute. If the eligibility criteria of a 209(b) state's 1972 Medicaid plan are valid, the Secretary has no power under the statute to require the state "to provide medical assistance to any aged, blind, or disabled individual * * * unless such State would be (or would have been) required to provide medical assistance to such individual * * * had its plan for medical assistance approved under this subchapter and in effect on January 1, 1972, been in effect * * *." 42 U.S.C. 1396a(f). Hence, states that in 1972 considered the income of an institutionalized Medicaid applicant's spouse in making eligibility or

benefit determinations must be allowed to continue to do so under the Section 209(b) option.

ARGUMENT

THE SECRETARY'S REGULATIONS CONCERNING "DEEMING" IN SECTION 209(b) JURISDICTIONS ARE CONSISTENT WITH THE MEDICAID STATUTE AND ARE OTHERWISE REASONABLE

The regulations invalidated by the court of appeals in this case set maximum and minimum limits on the extent to which participating states that exercise the Section 209(b) option may "deem" income of an applicant's spouse to be "available" to the applicant for the purposes of determining eligibility and the amount of assistance under the Medicaid program. The regulations require 209(b) states to consider the income of the spouse of any aged, blind, or disabled Medicaid applicant as "available" to the applicant at least to the extent that the spouse's income would be considered in determining SSI eligibility. In addition, the regulations permit a 209(b) state to consider the income of an applicant's spouse as "available" to the applicant to the extent that such income would have been considered in determining eligibility and the amount of assistance under the state's 1972 Medicaid plan, even if such income would not be considered in determining SSI eligibility. 42 C.F.R. 435.734 (Pet. App. 36a).

Congress expressly delegated authority to the Secretary to prescribe controlling standards for calculating the income and resources of all Medicaid applicants and recipients. Under Section 1902(a)(17)(B) of the Act, all state Medicaid plans must include provisions for determining eligibility and the appropriate amount of assistance that take "into account only such income and resources as are, *as determined in*

accordance with standards prescribed by the Secretary, available to the applicant or recipient * * *" (42 U.S.C. 1396a(a)(17)(B); emphasis added). Moreover, if a state Medicaid plan contemplates extending assistance to any group of individuals who have income and resources that are greater than permissible under the relevant cash assistance program, the state must adopt a "medically needy" program. 42 U.S.C. 1396a(a)(10)(C).[9] See 42 U.S.C. 1396b(f)(1)(B)(i); H.R. Rep. No. 544, 90th Cong., 1st Sess. 183 (1967); see also S. Rep. No. 744, 90th Cong., 1st Sess. 294 (1967); H.R. Conf. Rep. No. 1030, 90th Cong., 1st Sess. 63 (1967). Here, too, Congress has authorized the Secretary to establish standards for calculating the income and resources of the "medically needy." 42 U.S.C. 1396a(a)(10)(C). Thus, unless the Secretary's regulations for determining "available" income are inconsistent with the Medicaid Act, or are arbitrary, capricious, or otherwise unlaw-

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[9] Under Section 1902(a)(10)(C) of the Act, if the state plan contemplates coverage of any group of individuals who have income and resources greater than permissible under the relevant cash assistance program, the plan must also provide:

> (i) for making medical assistance available to all individuals who would, except for income and resources, be eligible for aid or assistance under * * * [any cash assistance program] and who have insufficient (as determined in accordance with comparable standards) income and resources to meet the costs of necessary medical and remedial care and services, and
>
> (ii) that the medical assistance made available to all individuals not * * * [receiving cash assistance] shall be equal in amount, duration, and scope * * *.

42 U.S.C. 1396a(a)(10)(C). These requirements are subject to certain exceptions, some of which are discussed at pages 44-46, 39-40, *infra*.

ful, they are dispositive. *Batterton* v. *Francis*, 432 U.S. 416, 425-426 (1977). See also *INS* v. *Wang*, No. 80-485 (Mar. 2, 1981), slip op. 5. By authorizing the Secretary to prescribe standards for determining what income is "available,"

> Congress entrusts to the Secretary, rather than to the courts, the primary responsibility for interpreting the statutory term. In exercising that responsibility, the Secretary adopts regulations with legislative effect. A reviewing court is not free to set aside those regulations simply because it would have interpreted the statute in a different manner.

Batterton v. *Francis*, *supra*, 432 U.S. at 425.

As we demonstrate below, the regulations at issue in this case are fully consistent with the language and legislative history of the Medicaid Act. It was appropriate for the Secretary to allow "deeming" between spouses, even when one spouse is institutionalized, and it was well within the Secretary's discretion to draw the deeming lines as he did. The Secretary's regulations were adopted in light of Congress' manifest purpose in enacting the 209(b) option: to avoid the potential adverse consequences of imposing additional Medicaid obligations on participating states. See, *e.g.*, H.R. Rep. No. 92-231, 92d Cong., 1st Sess. 197 (1971); S. Rep. No. 92-1230, 92d Cong., 2d Sess. 47, 222, 394 (1972). In light of this purpose, the court of appeals should have been particularly reluctant to invalidate the regulations by substituting its judgment for that of the Secretary. *Batterton* v. *Francis*, *supra*, 432 U.S. at 431-432.

The goals of the Medicaid Act are ill-served if the states do not participate. If participating states respond to the court of appeals' interpretation of the

statute by shifting limited funds from other assistance programs to the Medicaid program or by simply reducing Medicaid benefits generally, the court will have advanced the interests of one group of public assistance beneficiaries at the expense of another equally deserving group. While the individual states must ultimately decide whether they will withdraw from the program, reduce Medicaid benefits, or shift money from other programs, the Secretary is better equipped to evaluate the likely consequences of particular regulations and the costs and benefits associated with such consequences than is the judiciary. Moreover, it is the Secretary to whom Congress has delegated responsibility for making such judgments.

A. The Secretary's Regulations Are Consistent With the Language, Legislative History, and Purpose of the Medicaid Statute

Under Section 1902(a)(17) of the Social Security Act, a state Medicaid Plan must include:

> reasonable standards (which shall be comparable for all groups * * *) for determining eligibility for and the extent of medical assistance under the plan which (A) are *consistent with the objectives of this subchapter*, (B) provide for taking into account only such income and resources *as are, as determined in accordance with standards prescribed by the Secretary*, available to the applicant or recipient * * *, (C) provide for reasonable evaluation of any such income or resources, and (D) *do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child* * * *.

42 U.S.C. 1396a(a)(17) (emphasis added). As noted at the outset, Congress specifically delegated authority to the Secretary to define the term "available" income as used in Subsection (B). Congress necessarily appreciated that the meaning of the term was not self-evident or susceptible of but a single interpretation; there would have been no need to authorize the Secretary to prescribe standards for determining the obvious. *Batterton* v. *Francis*, *supra*, 432 U.S. at 428. The Secretary's discretion to prescribe standards for determining what is "available" income for purposes of the Medicaid statute is necessarily broad, although not unlimited. *Ibid.*; see also *INS* v. *Wang*, *supra*, slip op. 5. The regulations at issue in this case are well within the broad authority granted in Section 1902(a)(17)(B) of the Act (42 U.S.C. 1396a(a)(17)(B)).

In authorizing the Secretary to define "available" income for Medicaid purposes, Congress did not leave the Secretary without guidance. Subsection (D) prohibits the consideration of the income of any of the applicant's relatives, *except his spouse* (or, under some circumstances, his parent). This provision obviously contemplates that the income of an applicant's spouse may be considered "available" in determining the applicant's eligibility for medical assistance and the amount of assistance to which the applicant is entitled[10] Congress plainly did not regard the consideration of the income of the applicant's spouse as inconsistent with the available income limitation of Subsection (B). To the contrary, as even

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[10] Indeed, Congress included Subsection (D) because it was aware of the state rules adopted under the predecessor Kerr-Mills medical assistance program that took into account the

the court of appeals acknowledged (Pet. App. 9a), the Act "establishes a broad principle, or expectation, that 'deeming' is appropriate between spouses * * *." Moreover, the statute draws no distinction between spouses separated by institutionalization and those who share a common household. The language of Subsection (D) is unequivocal and unqualified: the Secretary is empowered to limit the extent to which the states may consider income "available" to the applicant, but he may not permit the states to consider the financial responsibility of anyone other than the applicant or "such individual's spouse * * *."

The legislative history clearly reflects Congress' view, as expressed in Subsection (D), that it is appropriate to demand that an applicant's spouse make a reasonable contribution to the applicant's medical care before the state undertakes to pay the cost of that medical care from public funds. In summarizing the provisions of the Act, the House Committee Report explained:

> No income can be imputed to an individual unless actually available; and the financial responsibility of an individual for an applicant may be

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income of the applicant's relatives. See, *e.g.*, H.R. Rep. No. 213, *supra*, at 68; S. Rep. No. 404, *supra*, at 78; 111 Cong. Rec. 15804 (1965) (remarks of Sen. Ribicoff); *id.* at 15876 (remarks of Sen. McNamara); *id.* at 15813 (remarks of Sen. Hart); *id.* at 16149 (remarks of Sen. Saltonstall). See also 109 Cong. Rec. 2773 (1963) (remarks of Sen. Anderson) (concerning effectiveness of Kerr-Mills program and criticizing relative responsibility rules in effect in New York). If Congress had thought it appropriate to preclude consideration of the income of an applicant's spouse, it surely would have done so, as it did with respect to the income of all relatives except the applicant's spouse and (in some instances) his parents.

> taken into account only if the applicant is the individual's spouse or child who is under age 21 or blind or disabled.

H.R. Rep. No. 213, *supra*, at 10; see S. Rep. No. 404, *supra*, at 10. Use of the term "available" income in Section 1902(a)(17)(B) could not have been intended to exclude consideration of all income not in the applicant's hands. If so, there would be no "imput-[ation]" of income to the applicant. Congress obviously did not regard "actually available" income and "imputed" income as mutually exclusive. Furthermore, the relationship of the two independent clauses certainly suggests that the phrase "actually available" income was not understood to preclude consideration of the income of the Medicaid applicant's spouse. As the Committee later remarked:

> [I]t is proper to expect spouses to support each other and parents to be held accountable for the support of their minor children and their blind or * * * disabled children even though 21 years of age or older. Such requirements for support may reasonably include the payment by such relative, if able, for medical care.

H.R. Rep. No. 213, *supra*, at 68; see S. Rep. No. 404, *supra*, at 78.

Contrary to the court of appeals' assertion (Pet. App. 10a-11a), the propriety of demanding that an applicant's spouse contribute to the costs of the applicant's medical care to the extent possible is not based on any notion of economies achieved by sharing a common household. Rather, the "broad principle" (Pet. App. 9a) of interspousal responsibility is based on the relationship created by marriage. See *Califano* v. *Jobst*, 434 U.S 47, 52-53 n.8 (1977). For example, if any two people live together, there would

be savings, because they would "maintain a common household, 'shar[e]' income and expenses, * * * and constitut[e] a single economic unit" (Pet. App. 10a). Yet the statute clearly provides that the income of one household member may not be considered in determining the other household member's Medicaid eligibility, except if the two are married (or, in certain circumstances, if the person with whom the applicant shares a house is his parent). It is the marital relationship that is significant, and separation on account of institutionalization does not affect the propriety of asking that the applicant's spouse contribute to the extent that he can.[11]

By the same token, the Committee's reference to "absent fathers" and support orders (see Pet. App. 10a) in its more detailed explanation of the provisions of the Medicaid Act casts no doubt on the apparent relationship of Subsections (B) and (D). According to the Committee, Section 1902(a)(17) of the Act

> requires States to take into account only such income and resources as (determined in accordance with standards prescribed by the Secretary) are actually available * * *. Income and re-

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[11] The fact that an institutionalized applicant and his spouse no longer share a common household (see Pet. App. 10a-11a) may have implications concerning the amount that the spouse should be expected to contribute. But the institutionalization of an applicant has no bearing on the critical factor, namely, the marriage relationship. As described in some detail below (see pages 28-30, *infra;* see also note 5, *supra*), under the SSI statute the separation of spouses (by institutionalization or otherwise) is significant; because of the relationship between the SSI and Medicaid statutes, the Secretary has reasonably followed the distinctions drawn by the SSI statute in prescribing standards for determining "available" income under the Medicaid statute.

> sources taken into account, furthermore, must be reasonably evaluated by the States. These provisions are designed so that the States will not assume the availability of income which may not, in fact, be available or overevaluate income and resources which are available. Examples of income assumed include support orders from [*sic*] absent fathers, which have not been paid or contributions from relatives which are not in reality received by the needy individual.

H.R. Rep. No. 213, *supra*, at 67; see S. Rep. No. 404, *supra*, at 78. This passage confirms what is apparent from the language of the statute, namely, that Congress authorized the Secretary to prescribe standards limiting the extent to which participating states may consider income as "available" to the applicant and that the states must adopt reasonable standards for evaluating such income. Unless proscribed by the Secretary, however, the language of the statute and its legislative history make clear that a state may consider the income of a Medicaid applicant's spouse in determining eligibility or the amount of assistance. Consideration of income that is actually received by the applicant's spouse does not "assume" the availability of any income that is not, "in fact, * * * available." *Ibid.*

The reference to support orders directed to "absent fathers" provides no basis for the court of appeals' conclusion (Pet. App. 10a) that the consideration of the income of an institutionalized applicant's spouse is improper. Contrary to the court of appeals' apparent assumption, the "absent father" exception was the result of a particular social problem having no parallel in the case of assertedly "absent spouses" (see *ibid.*). Between 1961 and 1967, the percentage of families eligible for benefits under the AFDC

program (and therefore eligible for Medicaid) because the father was absent from the home increased from about 67% to 74%; the number of individuals receiving AFDC benefits because of an absent father who refused to contribute increased from about two million to almost four million during the same period. See S. Rep. No. 92-1230, 92d Cong., 2d Sess. 505 (1972).[12] The statement in the Committee Report concerning "absent fathers" and support orders referred to "absent fathers" in the AFDC context. One of the criteria for eligibility under the AFDC program is that the child have "been deprived of parental support or care" (see 42 U.S.C. 606(a), 603(a); see generally, *e.g.*, *King* v. *Smith*, 392 U.S. 309, 313 (1968). A support order directed to an "absent father," whose whereabouts or employment status may or may not be known, offers little basis for considering as "available" to the applicant the amount the absent father is directed to pay. See generally S. Rep. No. 92-1230, *supra*, at 506-519.

A totally different situation is presented when the applicant and his spouse are separated only because of the applicant's institutionalization. The spouse's location and income are generally ascertainable without difficulty. More important, the separation does not even suggest any break-down in the marital relationship. If, as the language of the statute and its legislative history make manifest, the states may (except to the extent proscribed by the Secretary)

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[12] Until the SSI program was enacted, disabled children under 18 were not even eligible for benefits under Title XIV of the Social Security Act (see 42 U.S.C. (1970 ed.) 1355) and the *total* number of recipients under Title X of the Act (Aid to the Blind) was only 98,313 as late as 1976 (United States Department of Health, Education, and Welfare, *Data on the Medicaid Program: Eligibility, Services, Expenditures* 75, Table 53 (rev. 1979 ed.)).

consider the income of an applicant's spouse in determining Medicaid eligibility, the applicant's institutionalization does not make that practice improper. Nowhere in the voluminous legislative hearings, reports or debates is there any suggestion of an "absent spouse" exception to the general "deeming" rule established in 42 U.S.C. 1396a(a)(17)(D).

The Secretary's decision to allow "deeming" between spouses is grounded in sound policy considerations as well. Requiring the states to ignore the income of an institutionalized Medicaid applicant's spouse would have a marked impact on the scope of the Medicaid program. The amount of money an institutionalized individual can earn is likely to be relatively small. Therefore, unless institutionalized Medicaid applicants have unearned income in excess of the applicable standard (see note 16, *infra*), they will all meet the income standards for Medicaid assistance. This result is required by the provisions of 42 U.S.C. 1396a(a)(10)(A) in SSI states. See pages 31-32, *infra*. There is no reason to impose that result upon 209(b) states, particularly in light of Congress' purpose for enacting the 209(b) option.

Unlike the Medicare program (adopted in 1965 as Title XVIII of the Social Security Act, 42 U.S.C. 1395 *et seq.*), Medicaid is not and was never intended to be a health insurance program. See *Fullington* v. *Shea*, 320 F. Supp. 500, 503 (D. Colo. 1970), aff'd, 404 U.S. 963 (1971). The more limited objective of the Medicaid Act is to enable "each State, as far as practicable under the conditions in such State" (42 U.S.C. 1396), to provide medical assistance to certain categories of the most needy individuals in our society. See generally H.R. Rep. No. 213, *supra*, at 66-67; S. Rep. No. 404, *supra*, at 77. The only individuals whom participating states were required to cover under the Medicaid Act, as passed in 1965, were the

recipients of cash assistance under the four categorical assistance programs. Pub. L. No. 89-97, 79 Stat. 345. Only if a state provided medical assistance to all cash assistance recipients could it then extend coverage to certain groups of the "less needy" who had income and resources greater than permissible under the cash assistance programs but who had incurred medical expenses that eliminated the excess income. See H.R. Rep. No. 213, *supra*, at 66-67; S. Rep. No. 404, *supra*, at 77; Pub. L. No. 89-97, 79 Stat. 345-346; see generally *Fullington* v. *Shea*, *supra*, 320 F. Supp. at 503-506. Congress did not intend, however, to allow the states to extend Medicaid coverage to individuals who were significantly less needy than the cash assistance recipients, however great their medical expenses. See H.R. Rep. No. 544, *supra*, at 117-119; S. Rep. No. 744, *supra*, at 176-177. Thus, the Medicaid Act is designed only to provide assistance to those least able to afford either the costs of medical care or private health insurance.[18]

In sum, the language, legislative history, and purpose of the Medicaid Act all support the conclusion that, in determining Medicaid eligibility and the amount of assistance, a state may (except to the extent proscribed by the Secretary) consider the income of an applicant's spouse as "available" to the

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[18] Even among the poor, however, the benefits of the Medicaid program are limited. With minor exceptions, only those persons who are over 65 years old, blind, disabled, or members of families with dependent children are eligible for medical assistance, whatever their income. For example, it has been estimated that only about 59% of those who had income in 1970 less than the national poverty standard were Medicaid recipients. See United States Department of Health, Education, and Welfare, *Data on the Medicaid Program: Eligibility, Services, Expenditures* 62-63 (rev. 1979 ed.).

applicant, whether or not the applicant and his spouse share a common household. See *Herweg* v. *Ray*, 619 F.2d 1265, 1272 (Ross, J.), 1280 (McMillian, J.) (8th Cir. 1980), petition for cert. pending, No. 79-1690 (filed Apr. 25, 1980); *Norman* v. *St. Clair*, 610 F.2d 1228, 1237 (5th Cir. 1980), petition for cert. pending, No. 80-498 (filed Sept. 27, 1980). "Available" income, as used in the Medicaid statute, includes all income received by the applicant or by those whom Congress has determined the state may reasonably expect to contribute to the costs of the applicant's medical care (*i.e.*, the applicant's spouse or, in some circumstances, his parent). The court of appeals therefore erred in concluding that Congress intended an exception to "the seemingly unequivocal expectation that spouses should support each other" (Pet. App. 10a) in cases where the spouses are not living together because of institutionalization. It was permissible for the Secretary, in prescribing regulations defining "available income" in 209(b) states, to permit "deeming" between spouses, including "deeming" between an institutionalized Medicaid applicant and his spouse.[14]

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[14] The Secretary has consistently interpreted the term "available" income, as used in 42 U.S.C. 1396a(a)(17)(B), to include the income of a Medicaid applicant's spouse. In 1966, Section D-4220(B)(4) of the United States Department of Health, Education, and Welfare, *Handbook of Public Assistance Administration* (Supplement D) required all states that participated in the Medicaid program but only covered recipients of cash assistance to include in their state plans provisions that:

> Provide that financial responsibility of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse and of parents for children under age 21, or blind, or permanently and totally disabled; and specify the extent to

As we now show, the "deeming" between spouses prescribed and permitted in the Secretary's regulations is not only consistent with the Medicaid Act but also reasonable. These regulations are derived from a careful analysis of the complex interlocking provisions of the Medicaid and SSI statutes.

B. The "Deeming" Regulations Applicable in Section 209(b) Jurisdictions Are Based on the Secretary's Reasonable Analysis of the Relationship Between the Medicaid and SSI Statutes

The regulations governing the extent to which participating states may consider the income of an applicant's spouse in determining Medicaid eligibility and the amount of assistance are based upon the Secretary's analysis of the interlocking statutory provisions of two complex social welfare programs, Medicaid and SSI. States that participate in the Medicaid program but fail to exercise the 209(b) option ("SSI states") are required by the regulations to consider the income of a Medicaid applicant's spouse only if that income would be considered in de-

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which the financial responsibility of any such relative is taken into account.

Identical requirements for states that covered the "medically needy" were imposed in Section D-4220(A)(5) of the *Handbook of Public Assistance* (Supplement D) (1966 ed.). At the same time, the regulations required the states to consider only such "income and resources as are *actually available*" (*id.* at Sections D-4220(B)(3) and D-4220(A)(4); emphasis added). See also 45 C.F.R. 248.21(a)(2) (rev. as of Jan. 1, 1972). Thus, like Congress, the Secretary found no inconsistency in requiring the states to consider only "actually available" income and yet permitting them to consider the income of the applicant's spouse without regard to whether the applicant and his spouse were separated by reason of institutionalization.

termining the applicant's eligibility for SSI benefits; if the income of the applicant's spouse would not be considered in determining the applicant's eligibiilty for SSI benefits, it may not be considered in determining the applicant's eligibility for Medicaid assistance in an SSI state. 42 C.F.R. 435.700, 435.723. The regulations invalidated by the court of appeals require 209(b) states (like SSI states) to consider the income of an applicant's spouse in determining Medicaid eligibility and the amount of assistance if the income would be considered in determining the applicant's eligibility for SSI benefits. But the regulations also permit 209(b) states to consider the income of a Medicaid applicant's spouse if that income would have been considered in determining the applicant's eligibility under his state's 1972 Medicaid plan. 42 C.F.R. 435.734. Careful examination of the Medicaid and SSI statutes shows that these distinctions are not arbitrary, capricious, or otherwise unlawful.

1. *Supplemental Security Income Eligibility*

The Secretary's Medicaid "deeming" regulations are based on his analysis of the relationship between the Medicaid and SSI statutes. Before examining the relationship between the two statutes, it is important to understand the method prescribed by Congress for determining eligibility for SSI benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381 *et seq.*

Effective January 1, 1974, the federal government assumed responsibility for providing financial assistance to "needy" individuals who are aged, blind, or disabled. 42 U.S.C. 1381 *et seq.* In determining eligibility for benefits under the SSI statute, Congress has

mandated that the income of both the applicant and his spouse be considered for as long as they live together. Section 1611 of the Social Security Act defines an individual eligible for SSI benefits, in pertinent part, as follows:

> (2) Each aged, blind, or disabled individual who has an eligible spouse and—
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> > (A) whose income (together with the income of such spouse) * * * is at a rate of not more than $2,628 [*i.e.*, $219 per month] * * * for the calendar year 1974, or any calendar year thereafter * * *.

42 U.S.C. 1382(a)(2)(A).[15] As used in this provision, the phrase "eligible spouse"

> means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who has not been living apart from such other aged, blind, or disabled individual for more than six months.

42 U.S.C. 1382c(b). The SSI benefit amount payable to an eligible individual and his "eligible spouse" is determined by deducting the couple's monthly countable income (see 42 U.S.C. 1382a) from $219 (*i.e.*, the monthly income limitation prescribed in Section 1611 of the Act, 42 U.S.C. 1382(a)(2)(A)).[16] See 42 U.S.C. 1382(b)(2). Thus, under the SSI statute, an applicant who has an "eligible spouse" is ineligible for any benefit payment if he and his spouse have

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[15] In Section 1617 of the Social Security Act, Congress provided for cost-of-living increases in the benefit amounts payable under the SSI program. 42 U.S.C. 1382f.

[16] Institutionalized SSI applicants are subject to much lower income limitations. See 42 U.S.C. 1382(e)(1); see generally *Schweiker* v. *Wilson*, No. 79-1380 (Mar. 4, 1981).

combined countable income greater than $219 per month. By definition, an individual ceases to be an "eligible spouse" under the statute after he has lived apart from his spouse for six months.

If a married SSI applicant has lived apart from his spouse for six months, or if an SSI applicant lives with a spouse who is not aged, blind, or disabled, the applicant is eligible for SSI benefits only if he is aged, blind, or disabled and his countable income (see 42 U.S.C. 1382a) is not at a rate of more than "$1752 * * * for the calendar year 1974 or any calendar year thereafter [*i.e.*, $146 per month]." 42 U.S.C. 1382(a)(1)(A). The SSI benefit amount is determined by deducting the individual's monthly countable income from $146. But under Section 1614(f)(1) of the Act,

> [f]or purposes of determining eligibility for and the amount of benefits for any individual who is married and whose spouse is living with him in the same household but is not an eligible spouse, such individual's income and resources shall be deemed to include any income and resources of such spouse, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances.

42 U.S.C. 1382c(f)(1). A married SSI applicant who lives with his spouse who is not aged, blind, or disabled is, therefore, entitled to SSI benefit payments only if their *combined* countable income does not exceed $146 per month.[17] Thus, "deeming" between spouses is generally mandated by statute in determining SSI eligibility.

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[17] An unmarried SSI applicant is, of course, subject to the same income limitations. 42 U.S.C. 1382(a)(1)(A), (b)(1).

2. *Medicaid Eligibility in SSI States*

The Secretary's regulations prohibit SSI states—that is, states that participate in the Medicaid program but fail to exercise the 209(b) option (42 U.S.C. 1396a(f))—from considering the income of a Medicaid applicant's spouse as "available" to the applicant if that income would not be considered in determining SSI eligibility. The regulations also require SSI states to consider the income of a Medicaid applicant's spouse whenever that income would be considered in determining SSI eligibility. As we now demonstrate, this congruence is dictated by the interlocking provisions of the Medicaid and SSI statutes.

a. *Eligibility for Medical Assistance under 42 U.S.C. 1396a(a)(10)(A).* All SSI states must provide medical assistance to all SSI benefit recipients. 42 U.S.C. 1396a(a)(10)(A). With carefully limited exceptions, individuals who are ineligible for benefits under the SSI program are also ineligible for medical assistance under the Medicaid program.[18] If SSI states were to consider the income of a Medicaid applicant's spouse as "available" to the applicant for purposes of determining Medicaid eligibility even though that income is not considered in determining

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[18] The major exception, of course, is established in the "medically needy" provision (see 42 U.S.C. 1396a(a)(10)(C)). There are, however, several others, some of which are listed in 42 U.S.C. 1396a note. See, *e.g.*, Pub. L. No. 94-566, Section 503, 90 Stat. 2685; Pub. L. No. 93-233, Section 13(c), 87 Stat. 965; Pub. L. No. 93-66, Section 230, 87 Stat. 159; Pub. L. No. 93-66, Section 231, 87 Stat. 159, as amended by Pub. L. No. 93-233, Section 13(b)(1), 87 Stat. 964; Pub. L. No. 92-603, Section 249E, 86 Stat. 1429, as amended by Pub. L. No. 93-66, Section 233, 87 Stat. 160. This case does not involve individuals who qualify for Medicaid benefits as members of families with dependent children receiving benefits under the AFDC program (42 U.S.C. 601 *et seq.*).

SSI eligibility, some SSI benefit recipients would be denied Medicaid assistance, contrary to the express command of Section 1902(a)(10)(A) of the Act, 42 U.S.C. 1396a(a)(10)(A). It follows, therefore, that although Section 1902(a)(17)(B) of the Act, 42 U.S.C. 1396a(a)(17)(B), would allow a state to consider the income of the applicant's spouse as "available" to the applicant for purposes of determining Medicaid eligibility, SSI states cannot be permitted to consider such income as "available" to the applicant if it would not be considered in determining SSI eligibility.[19]

Moreover, subject to the other exceptions previously mentioned (see note 18, *supra*), no participating state may provide Medicaid benefits to any individual who is ineligible for SSI benefits, unless the state adopts a "medically needy" program under Section 1902(a)(10)(C) of the Act, 42 U.S.C. 1396a(a)(10)(C). Unless the state considers all of the income of a Medicaid applicant that would be considered in determining the applicant's eligibility for SSI benefits, it is impossible to distinguish the "medically needy"

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[19] For example, but for the Secretary's regulations, if an applicant became eligible for and received SSI benefits because his noneligible spouse no longer lived in his home and therefore her income was not attributed to him, he would be eligible for Medicaid benefits in an SSI state. But if the same individual were unwilling to accept SSI benefits and applied directly to the state Medicaid agency for benefits under a program for the "medically needy" with higher income standards, he might nevertheless be denied medical assistance if the state Medicaid rules continued to take into account the income of his spouse. This discrimination between needy individuals and equally needy individuals who, for their own reasons, are unwilling to accept SSI benefits clearly was not intended by Congress. See 40 Fed. Reg. 60074 (1975).

from those individuals who are not receiving SSI benefits but are nevertheless eligible for SSI benefits. The distinction is significant. No state is entitled to federal financial assistance for providing Medicaid benefits to any member of a family that has countable income, "determined, in accordance with standards prescribed by the Secretary, to be equivalent to 133⅓ percent of the highest amount which would ordinarily be paid to a family of the same size without any income * * *" (42 U.S.C. 1396b(f)(1)(B)(i)) under the state AFDC program. But this limitation is inapplicable with respect to state medical assistance provided to individuals who are eligible to receive SSI benefits, even if they do not actually receive SSI benefit payments. See 42 U.S.C. 1396b(f)(4)(A), (B). The distinction is also important for the purpose of determining the scope of the services a participating state is obliged to furnish under its Medicaid plan (see 42 U.S.C. 1396a(a)(10)(B)(i), (C)(III)) and the kinds of charges that may be imposed on Medicaid beneficiaries (see 42 U.S.C. 1396a(a)(14)).

More significant, a participating state's *option* to adopt a "medically needy" program becomes an *obligation* to adopt a "medically needy" program covering the aged, blind, and disabled if the state provides medical assistance to

> any group of individuals who are not * * * [SSI recipients] and who do not meet the income and resources requirements of the * * * [SSI statute] as determined in accordance with standards prescribed by the Secretary * * *.

42 U.S.C. 1396a(a)(10)(C). The Secretary's responsibility for assuring that the requirements of this provision are satisfied cannot be carried out

unless, in making Medicaid determinations, participating states include at least the income that would be considered in determining the applicant's eligibility for SSI benefits. For example, if a state were to ignore the income of a Medicaid applicant's spouse under circumstances in which that income would be considered for the purpose of determining SSI eligibility, the applicant might be found eligible for medical assistance even though he would be ineligible for SSI benefits. By the terms of the Medicaid statute, however, such an individual is eligible for medical assistance only if the state adopts a "medically needy" program.

Because of the relationship between the Medicaid and SSI statutes, then, (1) all SSI states must ignore the income of a Medicaid applicant's spouse if that income would not be considered in determining SSI eligibility, and (2) all participating states, whether SSI states or 209(b) states, must consider the income of the applicant's spouse as "available" to the applicant to the extent that such income would be considered in determining SSI eligibility. The Secretary's regulations incorporate those requirements. 42 C.F.R. 435.700, 435.723, 435.734.[20] It is important to note that the Secretary's regulations are not based on

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[20] The court of appeals recognized that the relationship of the Medicaid and SSI statutes required SSI states to consider the income of a Medicaid applicant's spouse as "available" to the applicant to the same extent that the income would be considered in determining SSI eligibility (Pet. App. 3a, 5a, 7a). The court failed to appreciate the limited operation and effect of the 209(b) option, however, and consequently failed to understand that the reasons for requiring SSI states to consider the income of the applicant's spouse to the extent that such income would be considered in determining SSI eligibility are equally applicable in 209(b) states. See pages 36-49, *infra*.

the notion that the SSI statute changed or amended the meaning of the term "available" income, as used in the Medicaid statute. Rather, as discussed in Part A of this brief, the term "available" income as used in the Medicaid statute includes the income of the applicant's spouse, whether or not they live together; the interlocking provisions of the two statutes, however, provide the basis for the precise requirements of the regulations.

b. *Eligibility for Medical Assistance under 42 U.S.C. 1396a(a)(10)(C).* Under Section 1902(a)(10)(C)(i) of the Act, 42 U.S.C. 1396a(a)(10)(C)(i), a state may provide medical assistance to individuals "who would, except for income and resources" be eligible for SSI benefits, subject to the limitations imposed by 42 U.S.C. 1396b(f). Standards for determining eligibility and the amount of assistance, however, must be "comparable" for all groups that are covered under the state Medicaid plan. 42 U.S.C. 1396a(a)(17). The Secretary has concluded that "comparable" standards in this context requires that the states use the same method for calculating the income of the "medically needy" as is used in calculating the income of the "categorically needy." See 40 Fed. Reg. 60074 (1975).

The basis for this conclusion is relatively straightforward. The primary purpose of the "medically needy" provision is to permit participating states to provide medical assistance to individuals whose income is slightly in excess of the standards established under the categorical assistance plans but who incur medical expenses that substantially eliminate their "excess income."[21] As noted above (see note 19,

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[21] See, *e.g.*, H.R. Rep. No. 544, *supra*, at 117-119; S. Rep. No. 744, *supra*, at 176; see generally H.R. Rep. No. 213, *supra*, at 66-67, 168; S. Rep. No. 404, *supra*, at 77-78, 79.

supra), if, in determining Medicaid eligibility, states take into account income that would be ignored in determining eligibility for SSI benefits, even those who are eligible for SSI benefits may be found ineligible for medical assistance. Also, for reasons already mentioned, it is essential that the Secretary be able to distinguish between those who meet the income and resources limitations of the SSI statute and all other non-SSI recipients covered under state Medicaid plans. See 42 U.S.C. 1396b(f), 1396a(a)(10)(C)(III), 1396a(a)(14). Finally, a state plan that includes only one method for calculating an applicant's income is "consistent with simplicity of administration" and for that reason is in "the best interests of the recipients" (see 42 U.S.C. 1396a(a)(19)).

Thus, as the court of appeals seemed to recognize (Pet. App. 3a, 5a, 7a), the regulations requiring SSI states to consider the income of a Medicaid applicant's spouse as "available" to the applicant in the same manner as the income would be considered in determining SSI eligibility are virtually compelled by the statutory scheme Congress has established and are not arbitrary, capricious, or otherwise unlawful. See *Herweg* v. *Ray*, *supra*, 619 F.2d at 1281-1289 (McMillian, J.); *Norman* v. *St. Clair*, *supra*, 610 F.2d at 1238. For the reasons that follow, the regulations governing the extent to which 209(b) states may consider the income of an applicant's spouse in determining Medicaid eligibility also are consistent with the statute and are reasonable.

3. *Medicaid Eligibility in 209(b) States*

a. *Purpose and Effect of the 209(b) Option.* Adoption of the SSI program was expected to result in a tremendous increase in the number of aged, blind, and disabled individuals who would be eligible for cash assistance and, consequently, eligible for Medi-

caid benefits under Section 1902(a)(10)(A) of the Social Security Act, 42 U.S.C. 1396a(a)(10)(A). See H.R. Rep. No. 92-231, *supra*, at 227-228.[22] Congress sought to alleviate the burden that would be imposed on participating states because of this requirement by enacting Section 209(b) of the Social Security Amendments of 1972 (Pub. L. No. 92-603, 86 Stat. 1381), which added Section 1902(f) to the Act:

> Notwithstanding any other provision of this title, except as provided in subsection (e) [added by Pub. L. No. 92-603, Section 209(a), 86 Stat. 1381], no State shall be required to provide medical assistance to any aged, blind, or disabled individual (within the meaning of title XVI [of the Social Security Act]) for any month unless such State would be (or would have been) required to provide medical assistance to such individual for such month had its plan for medical assistance approved under this title and in effect on January 1, 1972, been in effect in such month, except that for this purpose any such individual shall be deemed eligible for medical assistance under such State plan if (in addition to meeting such other requirements as are or may be imposed under the State plan) the income of any such individual as determined in accordance with section 1903(f) [42 U.S.C. 1396b] (after deducting such individual's payment under title XVI, and incurred expenses for medical care as defined in section 213 of the Internal Revenue Code of 1954) is not in excess of the standard

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[22] The House Committee estimated that in the first year of operation the number of aged, blind, and disabled individuals who would be eligible under the new SSI program would be almost twice the number of individuals eligible under the old adult categorical assistance plans. See H.R. Rep. No. 92-231, *supra*, at 227-228, Table 12.

> for medical assistance established under the State plan as in effect on January 1, 1972.

42 U.S.C. 1396a(f).

In 1972, participating states were only required to provide medical assistance to those aged, blind, or disabled individuals who were recipients of cash assistance under one of the categorical assistance programs (42 U.S.C. (1970 ed.) 1396a(a)(10)(A)). Effective January 1, 1974, the old categorical assistance programs were to be repealed (and replaced) by the SSI program. It is plain, therefore, that the intended operation and effect of the 209(b) option was only to limit the obligations of participating states under 42 U.S.C. 1396a(a)(10)(A). A state that exercised the option could only be required to provide medical assistance to those aged, blind, or disabled individuals who were eligible for SSI benefits *and* who would have been eligible for medical assistance under the state's January 1972 Medicaid plan. But, for the purpose of determining who would have satisfied the income limitations of the state's 1972 plan, SSI benefit payments and incurred medical expenses were to be excluded.[23]

States that exercise the 209(b) option are not exempt from any of the other requirements of the Medicaid Act. If, in addition to the coverage required by the terms of 42 U.S.C. 1396a(f), 209(b) states choose to cover optional groups, they are subject to the same restrictions as other participating states. See, *e.g.*, 42 U.S.C. 1396b(f), 1396a(a)(10)(B)(i), (C). Consequently, 209(b) states, in making Medicaid deter-

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[23] In Section 13(a)(10) of Pub. L. No. 93-233, 87 Stat. 962, the provision was modified to require the exclusion of state supplementary payments as well as SSI benefit payments and medical expenses.

minations, must consider the income of an applicant's spouse as "available" to the applicant if that income would be considered in making SSI eligibility determinations, for essentially the same reasons that SSI states must do so.

Immediately before the Social Security Amendments of 1972 became effective, Congress added the following provisions to 42 U.S.C. 1396a(f):

> In [209(b)] States which provide medical assistance to individuals pursuant to * * * [42 U.S.C. 1396a(a)(10)(C)], an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under * * * [42 U.S.C. 1396a(a)(10)(A)] if that individual is, or is eligible to be (1) an individual with respect to whom there is payable a State supplementary payment on the basis of which similarly situated individuals are eligible to receive medical assistance equal in amount, duration, and scope to that provided to individuals eligible under * * * [42 U.S.C. 1396a(a)(10)(A)], or (2) an eligible individual or eligible spouse, as defined in title XVI [of the Social Security Act], with respect to whom supplemental security income benefits are payable; otherwise that individual shall be considered to be an individual eligible for medical assistance under * * * [42 U.S.C. 1396a(a)(10(C)]. In States which do not provide medical assistance to individuals pursuant to * * * [42 U.S.C. 1396a(a)(10)(C)], an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for med-

> ical assistance under * * * [42 U.S.C. 1396a(a)(10)(A)].

Pub. L. No. 93-233, Section 13(a)(10)(D), 87 Stat. 962-963. Thus, in a 209(b) state that has a "medically needy" program, an individual who is eligible for medical assistance under the state's 1972 plan because of the 209(b) spend-down provision is classified with SSI recipients only if (1) he is eligible for a state supplementary payment *and* the state provides medical assistance to other state supplementary payment recipients equal to that provided to SSI recipients (see 42 U.S.C. 1396a(a)(10)(C)(III) and 1396b(f)(4)(C)) or (2) he is eligible for SSI benefits. If the individual is not eligible for SSI benefits or a state supplementary payment (see 42 U.S.C. 1396d(j), 1382e), he is classified with the other "medically needy," and the state is entitled to federal financial assistance under the Medicaid program only if his countable income is not greater than 133⅓% of the applicable AFDC payment amount (42 U.S.C. 1396b(f)). In a 209(b) state that does not have a "medically needy" program, an individual who meets the requirements of the state's 1972 plan because of the 209(b) spend-down provision is classified with SSI recipients, and therefore the state does not become obligated to adopt a "medically needy" program (42 U.S.C. 1396a(a)(10)(C)) by providing medical assistance to him, even if he is ineligible for SSI benefits. Also, by virtue of this provision, the income limitations of 42 U.S.C. 1396b(f) are inapplicable to these individuals.

Adoption of these exceptions to the general requirements of the Medicaid Act for 209(b) jurisdictions confirms the previous observation based on the lan-

guage of the provision as originally enacted. Except to the extent specifically provided for in 42 U.S.C. 1396a(f), 209(b) jurisdictions that choose to offer Medicaid coverage to non-SSI recipients (*i.e.*, optional groups) are subject to all of the general requirements of the Medicaid statute. If the intended or anticipated effect of the 209(b) option had been to relieve states that exercised the option of all the limitations of the Medicaid statute, there would have been no reason to adopt these very specific and narrow exceptions to the otherwise applicable requirements of the statute.

The legislative history of the 1972 amendments provides further support for the conclusions that are virtually compelled by the language of the 209(b) option (42 U.S.C. 1396a(f)). According to the Senate Committee Report, the 209(b) option

> gives States the option of covering under medicaid aged, blind and disabled persons made *newly eligible for cash assistance* as a result of the increases in payment levels to these persons provided under * * * [the] bill.
>
> No State would be required to furnish medical assistance *to any individual receiving aid as a needy aged, blind or disabled adult unless the state would be (or would have been) required to furnish such assistance to such individual under its medicaid plan that was in effect on January 1, 1972.* However, if a state should elect to provide medicaid benefits on the basis of its January 1, 1972 medical assistance standard it would be required to incorporate a spend-down provision comparable to that contained in section 1903(f) [see 42 U.S.C. 1396b(f)(2)] * * *.

S. Rep. No. 92-1230, *supra*, at 222 (emphasis added); see also *id.* at 47, 394; H.R. Rep. No. 92-231, *supra*,

at 197;[24] H.R. Conf. Rep. No. 92-1605, 92d Cong., 2d Sess. 46-47 (1972). The 209(b) option was intended to allow the states to avoid *expanded* Medicaid obligations resulting from the anticipated increase in the number of individuals who would be eligible for cash assistance under the SSI program. States that exercise the option are not required to provide Medicaid assistance to

> persons who are eligible for Supplemental Security Income but would not have been eligible for assistance under the State welfare programs for the aged, blind, and disabled as they were in effect prior to the initiation of this new program.

S. Rep. No. 92-1230, *supra*, at 394; see also S. Rep. No. 93-553, 93d Cong., 1st Sess. 7-8, 56-57 (1973);

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[24] Under present law, States are required to cover under medicaid all people eligible for cash assistance payments. If this provision were carried over into the new assistance programs, many thousands of additional people, the great majority of whom would be people made *newly eligible for assistance to the aged, blind, and disabled*, would be required to be covered under medicaid. In view of the serious financial and other problems of many State medicaid programs, your committee decided not to require the States to cover the newly eligible but rather leave the decision up to each individual State. Your committee's bill would, therefore, provide that despite any other requirements of Title XIX [of the Social Security Act], no State shall be required to provide medicaid coverage to any individual or family member in any month where such person would not have been eligible for such assistance under the State plan in effect on January 1, 1971.

H.R. Rep. No. 92-231, *supra*, at 197 (emphasis added); see *id.* at 301. In conference, the January 1, 1972 date found in the Senate version was adopted.

Staffs of Senate Comm. on Finance and House Comm. on Ways and Means, 92d Cong., 2d Sess., *Summary of Social Security Amendments of 1972: Public Law No. 92-603 (H.R. 1)* 27 (Comm. Print 1972); H.R. 3153, 93d Cong., 1st Sess., *Social Security Amendments of 1973, Brief Description of Senate Amendments* 25, 26 (Conf. Comm. Print 1973).

Because the only individuals the states were required to cover under their Medicaid plans in 1972 were recipients of cash assistance under one of the categorical assistance programs, the only purpose the 209(b) option could have had was to excuse the states from providing medical assistance to the additional group of individuals who became eligible for benefits under the new SSI program.[25] Thus, the purpose and effect of the 209(b) option is solely to provide a partial exemption from the requirements of 42 U.S.C. 1396a(a)(10)(A). A state that exercises the option cannot be required to cover SSI benefit recipients, unless those individuals would have been eligible for Medicaid benefits under the state's 1972 Medicaid plan. All of the other requirements of the Medicaid statute are fully operative.

If a Medicaid applicant in a 209(b) state is an SSI recipient and he would also have been eligible under the state's 1972 Medicaid plan, the state must provide medical assistance, as required in Section 1902(a)(10)(A). And in a 209(b) state, as in an SSI state, a Medicaid applicant who is not an SSI benefit recipient is eligible for medical assistance only

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[25] The legislative history is silent as to the purpose of the 209(b) spend-down provision. However, the provision undoubtedly was included because Congress assumed that the states most likely to exercise the 209(b) option were those with relatively low 1972 income limitations.

if (1) he meets the requirements of one of the optional categories (see, *e.g.*, 42 U.S.C. 1396a(a)(10)(C)) and the state has chosen to provide medical assistance to that category of potential Medicaid beneficiaries or (2) he is within one of the other exceptions to the general rule that non-SSI recipients are ineligible for Medicaid benefits (see, *e.g.*, Pub. L. No. 93-233, Section 13(c), 87 Stat. 965). Hence, Section 1902(f) of the Act, 42 U.S.C. 1396a(f), provides no basis for ignoring the interrelationship of the Medicaid and SSI statutes. On the contrary, the interlocking provisions of the two statutes are as important in 209(b) states as they are in SSI states, and for precisely the same reasons.

b. *Eligibility for Medical Assistance under 42 U.S.C. 1396a(a)(10)(A) and 1396a(a)(10)(C).* As stated above, with carefully limited exceptions, an individual who is ineligible for SSI benefits is also ineligible for Medicaid in SSI states as well as in 209(b) states. For example, the basic benefit amount initially payable under the SSI statute for an aged, blind, or disabled individual (*i.e.*, $130 per month, Pub. L. No. 92-603, Section 301, 86 Stat. 1466) was higher than that paid by most states in July 1972. See S. Rep. No. 92-1230, *supra*, at 78-81, Tables 3 & 4; see also *id.* at 75; H.R. Rep. No. 92-231, *supra*, at 199. In those states with benefit levels for the aged, blind, and disabled that were higher than the SSI standards, adoption of the SSI program would have resulted in a reduction of benefits for some individuals and a complete loss of benefits for others, with the consequence for the latter of the loss of Medicaid benefits in states that did not have "medically needy" programs. To avoid causing a reduction in benefit payments to any aged, blind, or disabled individual who was receiving cash assistance in De-

cember 1973, Congress required participating states to make supplementary payments to those individuals. Pub. L. No. 93-66, Section 212, 87 Stat. 155-158, as amended by Pub. L. No. 93-233, Section 10, 87 Stat. 957-958; see 119 Cong. Rec. 22606 (1973) (remarks of Sen. Long); *id.* at 22645 (remarks of Rep. Mills); S. Rep. No. 93-249, 93d Cong., 1st Sess. 24-25 (1973). The amount of the required state supplementary payment is equal to the difference between the individual's "December 1973 income" and the individual's income in any subsequent month. Pub. L. No. 93-66, Section 212(a)(3), 87 Stat. 155-156. The state is only required to make supplementary payments to individuals who were *receiving* benefits in December 1973 and only for so long as the individual's "December 1973 income" is greater than the individual's SSI benefit payment, if any, and any other income the individual might have. Continuous Medicaid coverage for mandatory state supplementary payment recipients was assured in Pub. L. No. 93-233, Section 13(c), 87 Stat. 965; see S. Rep. No. 93-553, *supra*, at 8, 56.

Mortality and the cost of living increase provision in the SSI statute (42 U.S.C. 1382f) make the mandatory state supplementary payment provision self-terminating. In light of the limited nature of this provision and the other "grandfather" clauses included in the legislation effecting the transfer of responsibility to the federal government for providing financial assistance to the aged, blind, and disabled (see, *e.g.*, 42 U.S.C. 1382(g), (h); Pub. L. No. 93-66, Section 211, 87 Stat. 154-155), and in light of the purpose of the 209(b) option, it is inconceivable that Congress intended to require states exercising that option to provide Medicaid coverage to any individual who is ineligible for SSI benefits, except as may

result from the operation of the 209(b) spend-down clause.

Similarly, it is most unlikely that Congress intended to allow 209(b) jurisdictions to circumvent the carefully drawn limitations on the state's option to provide federally-supported medical assistance to certain individuals who are ineligible for SSI benefits. For example, under Section 1616 of the Social Security Act, states may voluntarily make supplementary payments to an individual who is aged, blind, or disabled but ineligible for SSI benefits because of his income. 42 U.S.C. 1382e. If a state establishes a voluntary supplementary payment program, it may also provide medical assistance "of the same amount, duration, and scope" as that provided to SSI recipients to those who receive or are eligible to receive state supplementary payments, without adopting a "medically needy" program. See 42 U.S.C. 1396a(a)(10)(C)(III). But the state is entitled to receive federal financial assistance for providing medical assistance to an individual who is eligible for an optional state supplementary payment (but ineligible for SSI benefits) only if the individual's gross income is not in excess of 300% of the SSI benefit rate. 42 U.S.C. 1396b(f)(4)(C).

Unless a Medicaid applicant is eligible for SSI benefits or qualifies under one of the limited exceptions to the general rule, he is ineligible for Medicaid benefits under 42 U.S.C. 1396a(a)(10)(A) in either an SSI state or a 209(b) state. As discussed in some detail above (see pages 32-34, *supra*), if the Secretary is to carry out his responsibility under the Medicaid program, it is essential that he be able to determine whether the non-SSI benefit recipients covered under state Medicaid plans are eligible for SSI benefits. Without redetermining the Medicaid eligibility of

every non-SSI recipient covered under every state plan, it is impossible to make that determination unless the states consider the income of an applicants' spouse to the extent that it would be considered in determining SSI eligibility. Thus, in making Medicaid determinations, 209(b) states (like SSI states) must consider the income of an applicant's spouse at least to the extent that it would be considered in determining SSI eligibility.

In addition to *requiring* 209(b) states to consider the income of a Medicaid applicant's spouse as "available" to the applicant whenever that income would be considered in determining SSI eligibility, the Secretary's regulations *permit* 209(b) states to consider the income of a Medicaid applicant's spouse as "available" to the applicant if such income would have been considered under the states' 1972 Medicaid plan. By its terms, Section 1902(f) of the Act, 42 U.S.C. 1396a(f), requires the Secretary to allow 209(b) states to consider the income of a Medicaid applicant's spouse to the extent that they would have lawfully done so in 1972. As demonstrated in Part A of this brief, under Section 1902(a)(17) of the Act, 42 U.S.C. 1396a(a)(17), participating states may consider the income of a Medicaid applicant's spouse whether the applicant and his spouse live together or not. For reasons already mentioned (see pages 35-36, *supra*), the Secretary's judgment that 209(b) states should use the same method of calculating income for the optional coverage groups as is used in determining the eligibility of the categorically needy is sound.

The court of appeals' interpretation of the statutes effectively turns the statutory scheme envisioned by Congress on its head. As the court of appeals seems to have recognized (Pet. App. 3a, 5a, 7a), SSI states must consider the income of a Medi-

caid applicant's spouse as "available" to the applicant if that income would be considered in determining the applicant's eligibility for SSI benefits. The legislative history of the 209(b) option is clear: its only purpose was to permit participating states to avoid the tremendous increase in their Medicaid obligations that would result from requiring them to cover all SSI recipients. Yet, if 209(b) states are prohibited from considering the income of a Medicaid applicant's spouse even though such income is considered in determining eligibility in SSI states and would have been considered under the 209(b) states' 1972 plans, Congress' purpose in enacting the provision will have been completely frustrated. Ignoring the income of a Medicaid applicant's spouse necessarily results in an increase in the scope of Medicaid coverage; individuals who would not have been eligible under the 209(b) states' 1972 Medicaid plans, and who would not be eligible in SSI states today, will become eligible in 209(b) states. Similarly, allowing 209(b) states to ignore the income of a Medicaid applicant's spouse even though such income would be considered in determining SSI eligibility would give the 209(b) option a wholly unintended effect. Subject to the exceptions (and concomitant limitations) noted above, individuals who are ineligible for SSI benefits are also ineligible for Medicaid benefits.[26]

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[26] Even if the court of appeals were correct in noting that "there is no required federal statutory 'deeming' in the 209 (b) jurisdictions" (Pet. App. 8a), the Secretary's decision to require all participating states to consider the income of the Medicaid applicant's spouse to the extent that it is considered in determining SSI eligibility is not inconsistent with the Medicaid Act, arbitrary, capricious, or otherwise unlawful. As used in the Medicaid Act, the term "available" income includes the income of an applicant's spouse, whether they live together or not. See Part A, *supra*. For reasons already

In sum, the Secretary's regulations requiring 209 (b) states to consider the income of an applicant's spouse as "available" to the applicant if it would be considered in determining SSI eligibility, and allowing 209(b) states to consider the income of an applicant's spouse to the extent that they would have done so in 1972, are consistent with the Medicaid statute and reasonable. The regulations, therefore, are entitled to legislative effect.

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stated, the Secretary must be able to determine whether the individuals for whom the state proposes to provide medical assistance are eligible for SSI benefits or qualify under one of the optional categories. The Secretary's responsibility for assuring that the coverage provided under each state plan is consistent with the requirements of the Medicaid Act, in theory as well as in practice, thus provides ample justification for requiring all Medicaid states to consider the income of an applicant's spouse at least to the extent that the income would be considered in determining SSI eligibility. Furthermore, because of the close relationship that has always existed between the categorical assistance programs and the Medicaid program, the SSI statute provides a particularly appropriate model for rules concerning income evaluation.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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